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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,097	04/03/2006	Derek Cornes	70285	1174

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SYNGENTA CROP PROTECTION, INC.
PATENT AND TRADEMARK DEPARTMENT
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GREENSBORO, NC 27409

EXAMINER

BROOKS, KRISTIE LATRICE

ART UNIT

PAPER NUMBER

1616

NOTIFICATION DATE

DELIVERY MODE

05/15/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

department-gso.patent@syngenta.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/560,097

Applicant(s)

CORNES ET AL.

Examiner

KRISTIE L. BROOKS

Art Unit

1616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 April 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Johann R. Richter/
Supervisory Patent Examiner, Art Unit 1616

5/11/09

Continuation of 11, does NOT place the application in condition for allowance because:

Applicants arguments are not deemed convincing. Applicant argues that Fenderson et al. teach a three way mix in control of monocotyledon crops and Banks et al. teach away from the use of glyphosate because it is drawn to the use of controlling dicotyledon crops and also because the over the top application is said to injure the crops. This argument is not convincing because Fenderson et al. already suggest the combination of all three instant herbicides for controlling both monocotyledon and dicotyledon crops (see column 4 lines 44-67, column 5 lines 1-61 and column 6 lines 52-58). Furthermore, glyphosate is a known good weed controller for dicotyledon crops as suggested by Banks et al. Moreover, the instant claims do not specify the type of weeds that are being treated.

Next, Applicant argues that Feucht et al. and Armel do not teach the instant combination of herbicides. This argument is not convincing because as stated in the final rejection mailed January 22, 2009, Feucht et al. teach the combination of glyphosate, flufenacet and other additional herbicidal actives for the post emergence treatment of weeds. Mesotrione is a known post emergence weed controller as suggested by Armel et al., used to control the same weeds as described in Feucht et al. Thus, it would have been obvious to one of ordinary skill to incorporate mesotrione into the formulations taught by Feucht et al.

Lastly, Applicant argues that Hudetz et al. only exemplifies using pre-emergence and pre- and post-emergence treatment and no exemplification is drawn to the post treatment only. Applicant further argues that Hudetz et al. do not exemplify the instant combination of herbicides. These arguments are not convincing. Hudetz et al. do teach post emergence application of compounds for the treatment of weeds (see Example B1 in column 18). Although Hudetz et al. do not exemplify the the instant combination, Hudetz suggests that all the instant compounds can be combined together and are useful for the treatment of weeds pre- or post emergence. Furthermore, disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. In re Susi, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). Therefore, applicants arguments are not deemed convincing and the instant rejections are maintained.